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January 17, 2008

BY E-FILING

The Honorable Joseph J. Farnan, Jr.
U.S. District Court for the
District of Delaware
844 North King Street
Lock Box 27
Wilmington, DE 19801

RE: *Magten Asset Management Corp. and Law Debenture Trust Company v. NorthWestern Corp.*, C.A. No. 04-1494-JJF and
Magten Asset Management Corp., et al. v. Mike J. Hanson and Ernie J. Kindt,
C.A. No. 05-499-JJF

Dear Judge Farnan:

I write on behalf of defendants Michael J. Hanson and Ernie J. Kindt in response to the plaintiff's letter of the same date regarding two separate motions *in limine* to strike the expert reports and preclude the testimony of Magten's witnesses, Paul A. Marcus and Robert W. Berliner. The motions were filed on January 10, 2008 so that they would be briefed and ready for Court discussion as the Court might deem appropriate at the Joint Pretrial Conference scheduled for February 7, 2008. Magten's response to both motions *in limine* is due January 25 under the local briefing rules and the replies are due February 1.

There is nothing in the Scheduling Order or local rules indicating that motions *in limine* should be filed with leave of Court as stated by Magten in its letter. Hanson and Kindt merely seek to place the Daubert issues before the Court so that it may be aware of the particular issues and address them in the normal course of the Joint Pretrial Conference. Accordingly, we do not perceive the motions *in limine* to be "prematurely-filed motions" as referred to by Magten but rather timely motions to inform the Court of important issues pending between the parties that may affect the case posture.

The Scheduling Order is unclear as to whether or not trial will be going forward against Messrs. Hanson and Kindt on March 3, 2008 and this is a point upon which counsel for Messrs. Hanson and Kindt intend to seek clarification at the Joint Pretrial Conference on February 7, 2008. Accordingly, the filing of motions *in limine* in a case in which Plaintiff has

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demanded a jury trial that may be going forward in six weeks is not premature. Rather, it is a proper timely placement of issues before the Court.

Counsel for Messrs. Hanson and Kindt fully complied with Local Rule 7.1.1 in that counsel discussed the potential filing of a motion *in limine* with counsel for Magten at the New York depositions of one of the experts on January 10, 2008. At that time, counsel for Magten indicated that the Daubert Motions could be filed (although they opposed the substance of the motion seeking to strike their experts) and then further discussions should be held on the schedule for filing any additional motions *in limine*. At no time during that discussion did counsel for Magten object to the filing of the Daubert Motions as premature.

Magten indicates in its letter that it intends to "raise several motions." It is the defendants position that any motions Magten intends to raise should be raised prior to the Joint Pretrial Conference so that counsel for Messrs. Hanson and Kindt and the Court are informed of the issues and may respond without further delay. Accordingly, we request that the Court: (1) deny Magten's request for the stay; (2) direct Magten to respond timely to the Daubert Motions by January 25; and (3) direct Magten to immediately file any motions it intends to raise so that there is no undue surprise at the Joint Pretrial Conference on February 7, 2008.

Respectfully submitted,

/s/ Denise Seastone Kraft

Denise Seastone Kraft (#2778)

DSK/dal

cc: Clerk of Court (By Hand)
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